

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 9, 2014

**Elisabeth A. Shumaker
Clerk of Court**

LAVERN BERRYHILL,

Plaintiff - Appellant,

v.

PRESIDENT OF OKLAHOMA CITY
N.A.A.C.P.; VICKI MILES-LAGRANGE;
ROZIA MARIE MCKINNEY-FOSTER;
LYNELL HARKINS; EDWARD EVANS;
LARRY FOSTER, JR.; JOYCE
JACKSON; JOHN DOE-BLACK
OKLAHOMA MALE PAROLE BOARD
MEMBER; TAMMY BASS-LESURE,

Defendants - Appellees.

No. 14-6139
(D.C. No. 5:13-CV-00474-W)

LAVERN BERRYHILL,

Plaintiff - Appellant.

v.

UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT OF
JUSTICE; FEDERAL BUREAU OF
INVESTIGATION; US DEPARTMENT
OF HOMELAND SECURITY; UNITED
STATES ATTORNEYS OFFICE,
Oklahoma City; UNITED STATES
ATTORNEY; FEDERAL PUBLIC
DEFENDER; GEO GROUP INC.;
OKLAHOMA PUBLISHING
COMPANY; CORRECTIONS
CORPORATION OF AMERICA;
CROWE & DUNLEVY; ANDREWS

No. 14-6140
(D.C. No. 5:12-CV-00225-C)

DAVIS PC; RALPH G. THOMPSON;
DOYLE W. ARGO, Magistrate; UNITED
STATES DISTRICT JUDGES WESTERN
DISTRICT OF OKLAHOMA; UNITED
STATES DISTRICT JUDGES EASTERN
DISTRICT OF OKLAHOMA; TENTH
CIRCUIT DISTRICT JUDGES; UNITED
STATES SUPREME COURT, Judges;
MARY FALLIN; BRAD HENRY, Former
Governor; DREW EDMONDSON;
DIANE L. SLAYTON; ROZIA
MCKINNEY FOSTER; KERRY ANN
KELLY; ROBERT E. BACHARACH;
BANA ROBERTS; GARY M. PURCELL;
OKLAHOMA BOARD OF
CORRECTIONS MEMBERS; JUSTIN
JONES; JOYCE JACKSON; DEBBIE
MORTON; RONALD ANDERSON;
LARRY FOSTER; DENTAL AND
MEDICAL DIRECTOR OF DOC;
MARTY SIRMONS; RANDALL
WORKMAN; TERRY CRENSHAW;
ART LIGHTLE; CHESTER MASON;
BOB COMPTON; O S P POLICY AND
PROCEDURES OFFICER; WILLIAM
TAYLOR; CHAD BROWN,

Defendants - Appellees.

ORDER

Before **LUCERO, PHILLIPS**, and **MCHUGH**, Circuit Judges.

Pro se plaintiff Lavern Berryhill appeals the district court's dismissals of two of his civil rights cases. The notices of appeal were filed substantially out of time, however. Consequently, we have concluded that this court lacks jurisdiction to consider these appeals.

Taking an appeal within the prescribed time is required to convey jurisdiction to this court. *Bowles v. Russell*, 551 U.S. 205, 209 (2007). A defect in subject matter jurisdiction cannot be waived. *Grosvenor v. Qwest Corp.*, 733 F.3d 990, 994 n.1 (10th Cir. 2013). Although Mr. Berryhill is proceeding *pro se*, he must comply with the same procedural requirements as all other litigants. *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007).

In a civil case in which the United States or its agent is a party, a party has 60 days from entry of the order being appealed to file a notice of appeal. 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). In Case No. 14-6139, the district court's dismissal order and separate Rule 58 order were entered on June 17, 2013. Mr. Berryhill filed a Motion for Rehearing, which tolled the time to appeal. Fed. R. App. P. 4(a)(4). The district court denied the Motion for Rehearing by order entered on July 23, 2013. To be timely, the notice of appeal had to be filed by September 23, 2013. *Id.* 26(c)(1)(C) (calculating time when deadline falls on weekend). The notice of appeal was not filed until June 30, 2014.

In Case No. 14-6140, the district court's order dismissing the case was entered on May 12, 2012. No separate judgment was entered, which extended the time to appeal. *Id.* 4(a)(7). A timely notice of appeal was due by December 11, 2012. The notice of appeal was filed on June 30, 2014.

The notices of appeal filed in these two cases were filed well after the filing deadlines expired. Accordingly, we lack jurisdiction to consider the appeals. *Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995) ("The time limit has run and we are without jurisdiction under the facts of this case.").

APPEALS DISMISSED. In light of our *sua sponte* dismissal of Case No. 14-6139, the Federal Defendants' Motion to Dismiss is denied as moot.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Lara Smith".

by: Lara Smith
Counsel to the Clerk